

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Cellular South License, Inc. Petition for Designation)	DA 02-1465
As An Eligible Telecommunications Carrier)	
Throughout Its Licensed Service Area in the)	
State of Alabama)	

To: Wireline Competition Bureau

**COMMENTS
OF THE
ALABAMA RURAL LOCAL EXCHANGE CARRIERS
("Alabama Rural LECs")**

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Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
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Hopper Telecommunications Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
OTELCO Telephone LLC
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
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July 3, 2002

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SUMMARY

The Alabama Rural LECs¹ file these comments in opposition to the Petition for Designation as an Eligible Telecommunications Carrier ("ETC") by Cellular South License, Inc. ("Cellular South") throughout its licensed service area in the State of Alabama. The companies making up the Alabama Rural LECs provide high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service territories. In comparison, Cellular South does not meet the statutory and regulatory requirements for ETC designation. Specifically, Cellular South does not offer all of the services supported by the Federal High-Cost Universal Service Program nor has it demonstrated that the public interest would be served by designation of a second ETC in the service areas of the rural telephone companies involved. The Alabama Rural LECs are not motivated by a desire to forestall competitive entry into their territories but rather wish to insure that universal service dollars are used as intended by this Commission and that those dollars remain available in the future.

Unlike the Alabama Rural LECs who were required to demonstrate that they met the universal service criteria prior to obtaining universal service dollars, Cellular South has not demonstrated that all portions of its rural territory are indeed in its "footprint." Additionally, Cellular South has not provided any evidence – only promises, that it will comply with Federal Communications Commission ("Commission") rules and APSC requirements regarding the advertising of those services for which it seeks universal service dollars.

¹ See text of these Comments at 1-2 for definition.

Cellular South has not consulted with the APSC regarding Cellular South's ETC designation request. Instead, Cellular South has submitted an order from the APSC issued to another CMRS carrier that did not seek ETC status in rural LEC areas. By bypassing the APSC, Cellular South has, in essence, restricted the ability of the state of Alabama to participate fully in the resolution of an issue that uniquely impacts rural exchange carriers situated within its borders. Moreover, the redefinition of a rural carrier's study area must only occur after active consultation with the appropriate state regulatory body. Recent comments filed by the APSC demonstrate that the Agency seeks, at a minimum, a consultative role prior to FCC approval of an ETC request in a rural LEC area and has serious concerns as to whether such request should be granted without additional measures being taken to protect rural customers and the viability of universal service program.

Again, while Cellular South may be licensed to provide telephone service in Alabama, there is no guarantee that it can actually provide service throughout its license areas. In fact, Cellular South has not provided any specific information that would allow the Commission or the public to ascertain where across the areas Cellular South has cited for ETC designation (whether exchanges, study areas, or license areas) its signal is actually capable of providing reliable service. The fact that Cellular South is licensed to provide service does not provide evidence that it is actually providing service.

While Cellular South does not meet the statutory and regulatory requirements for obtaining ETC designation, the fact that the public interest is not served by Cellular South's designation must prevent, or at least delay, any action by the Commission granting ETC status to

Cellular South. Granting ETC status to Cellular South would simply perpetuate, if not give incentive to, distorted competitive entry into the local telecommunications market.

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**COMMENTS
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Ardmore Telephone Company, Blountsville Telephone Company, Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc.², CenturyTel of Alabama, LLC, Frontier Communications of Alabama, Inc., Frontier Communications of Lamar County, Inc., Frontier Communications of the South, Inc. (formerly Southland Telephone Company), Graceba Total Communications, Inc., GTC, Inc. (formerly the Florala Telephone Company), Gulf Telephone Company, Hayneville Telephone Company, Inc., Hopper Telecommunications Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc., New Hope Telephone Cooperative, Inc., Oakman Telephone Company, OTELCO Telephone LLC, Peoples Telephone

² On October 1, 1998, Grove Hill Telephone Corporation and Goshen Telephone Company, Inc., were merged with and into Butler Telephone Company, Inc., now doing business as TDS Telecom.

Company, Ragland Telephone Company, Roanoke Telephone Company, Inc., Union Springs Telephone Company, Inc. and Valley Telephone Company (the "Alabama Rural LECs") by counsel, file these comments on the Petition for Designation as an Eligible Telecommunications Carrier ("ETC") by Cellular South License, Inc. ("Cellular South") throughout its licensed service area in the State of Alabama in accordance with the Commission's Public Notice released June 21, 2002, DA 02-1465. Because Cellular South does not meet the statutory and regulatory requirements for ETC designation and because Cellular South has not demonstrated that the public interest would be served by designation of an additional ETC in the service areas of the rural telephone companies involved, the Petition should be dismissed.

I. SERVICE PROVIDED BY THE ALABAMA RURAL LECs

The Alabama Rural LECs are incumbent local exchange carriers, which have provided high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service areas in the state of Alabama for an average of over sixty (60) years and are certified as ETCs. The service areas covered by Cellular South's petition include those of Butler Telephone Company, Inc. (d/b/a TDS Telecom), Castleberry Telephone Company, Inc., Frontier Communications of Alabama, Inc., Frontier Communications of the South, Inc., Gulf Telephone Company, Inc., and Millry Telephone Company, Inc. Other Alabama rural local exchange carriers have chosen to join these comments because of the dangerous precedent that will be set if Cellular South's petition is approved as filed.

One of the largest Alabama cities served by the Alabama Rural LECs is Foley, Alabama. Foley, pursuant to 2000 Census figures, has a population of approximately 7,590³; the total residential access lines of Gulf Telephone Company ("Gulf") for Foley are approximately 4,900. While it is virtually impossible to calculate the exact percentage of inhabited residences that subscribe to the services provided by Gulf in this rural Alabama town, Gulf estimates that ninety-four (94%) percent of the inhabited residences in Foley subscribe to its telephone service. In addition, the Alabama Rural LECs approximate that a similar percentage of inhabited residences located in their rural Alabama service areas subscribe to telephone service in their combined territory. The Alabama Rural LECs have worked with the APSC to ensure that service is available to all known inhabited rural residences in Alabama within their territory. They are subject to strict minimum service requirements and are required to respond to requests for service from any portion of their certificated area by prescribed deadlines.⁴ Further, none of the aforementioned companies have held orders for telephone service.

Of the companies composing the Alabama Rural LECs, Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc. (d/b/a TDS Telecom), Gulf Telephone Company, Graceba Total Communications, Inc., Hayneville Telephone Company, Inc., Hopper Telecommunications Company, Inc., Millry Telephone Company, Inc., Oakman Telephone

³ U.S. Census Bureau, American Fact Finder, Basic Facts, Quick Tables, Alabama Quick Links, 2000 Demographic Profile for Alabama, Counties and Places, Lanett City, http://factfinder.census.gov/bf?_lang=en_vt_name=DEC_2000_SF1_U_DP1_geo_id=16000US0141296.html (visited May 22, 2002).

⁴ Rule T-21, Telephone Rules of the APSC.

Company, OTELCO Telephone LLC, and Peoples Telephone Company, among others, provide telecommunications service to schools and libraries located within their territories. The children served include those located in the following rural cities and towns in Alabama: Arab, Alabama; Ashford, Alabama; Butler, Alabama; Centre, Alabama; Chatom, Alabama; Cottonwood, Alabama; Foley, Alabama; Florala, Alabama; Fruitdale, Alabama; Gilbertown, Alabama; Hayneville, Alabama; Milley, Alabama; Oakman, Alabama; Oneonta, Alabama; Silas, Alabama, and Walnut Grove, Alabama. The companies comprising the Alabama Rural LECs also provide Lifeline and Link Up service to eligible low-income customers located in their respective service areas in accordance with the mandates of 47 C.F.R. §§ 54.405 and 54.411 (2001).

Specifically, in late 1996, the Alabama Rural LECs implemented Lifeline reductions of \$7.00, which included a \$3.50 state component funded without a local rate additive to other local customers. Each of the Alabama Rural LECs have advertised these programs through various mechanisms, including bill inserts, public service announcements and through information made available through the APSC.⁵ All of the companies have regularly upgraded the telecommunications plant within their service territory in an effort to improve telephone service and its reliability. In addition, in spite of the significant costs for small rural ILECs, companies have invested in CALEA-compliant software upgrades. In certain instances, they are also

⁵ *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Fourth Report and Order, APSC Docket 25980, (released November 25, 1997), p. 24; *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Further Order, APSC Docket 25980, (released June 7, 2001).

required to participate in Extended Area Service arrangements.⁶ The large majority of the Alabama Rural LECs have also adopted expanded area calling plans in an effort to improve rural calling options⁷ and, on at least one occasion, have issued subscriber credits as a result.⁸

II. CELLULAR SOUTH DOES NOT MEET THE STATUTORY AND REGULATORY REQUIREMENTS FOR ETC DESIGNATION.

Contrary to the assertions set forth in its petition, Cellular South does not meet the statutory and regulatory requirements for ETC designation by the FCC pursuant to Section 214(e)(6)⁹ as set forth in the FCC's Section 214(e)(6) Public Notice¹⁰, as demonstrated below.

⁶ See, e.g., *Implementation of the Extended Area Service Plan for the Pineapple Exchange*, Order, APSC Informal Docket U-3271 (released May 7, 1990) (affecting Southland Telephone Company, Inc., now known as Frontier Communications of the South, Inc.).

⁷ *All Telephone Companies in Alabama Investigation into 0-40 calling across vs. LATA Boundaries*, Order and Notice of Hearing, APSC Docket 22645 (released September 9, 1992); *Southland Telephone Company, Petition for Approval of Proposed Tariff Revisions to add the provisions for Area Calling Service ("ACS")*, Order, APSC Docket 22293 (released February 3, 1992); *Mon-Cre Telephone Cooperative, Inc., Petition for Approval of proposed Tariff Revisions to add ACS provision*, Order, APSC Docket 21777 (released September 14, 1992); *Hayneville Telephone Company Petition for Approval to Introduce ACS*, Order, APSC Docket 23385 (released February 14, 1994); *Monroeville Telephone Company Petition to Introduce ACS*, Amended Order, APSC Docket 23521 (released May 11, 1994); *Grove Hill Telephone Corporation (now known as Butler Telephone Company, Inc.) Petition for Approval to Add Area Calling Plan*, Order, APSC Docket 24619 (released June 12, 1995); *Ragland Telephone Company Petition for Approval to Introduce ACS*, Order, APSC Docket 24619; *Moundville Telephone Company, Inc. Petition for Approval to Introduce ACS*, Order, APSC Docket 26408 (released May 10, 1999).

⁸ *Moundville Telephone Company, Inc. Petition for Issuance of Credits to Subscribers*, Order, APSC Docket 26408 (released May 21, 1998).

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.* (Communications Act or Act). References to section 214(e) in these Comments refer to the

A. Cellular South Has Not Consulted with the Alabama Public Service Commission (“APSC”).

The APSC has the “primary responsibility” for making ETC designations in the state of Alabama.¹¹ However, in those instances where a state commission does not have the authority to make the ETC designation, the Commission must perform the task.¹² In interpreting the application of these provisions, the Commission has previously held that it “will act on a Section 214(e)(6) designation request . . . only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that *the carrier* is not subject to the state commission’s jurisdiction.”¹³

The “‘affirmative statement’ of the state commission may consist of any duly authorized letter, comment or state commission order indicating that it lacks jurisdiction to perform designations over a *particular carrier*. *Each carrier* should consult with the state commission to

provision of universal service by an ETC under this section of the 1996 Act, which is codified at 47 U.S.C. § 214(e) of the Act.

¹⁰ *Procedures for FCC Designation Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1996*, Public Notice, 12 FCC Rcd 22947 (“Public Notice”).

¹¹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket 96-45, 15 F.C.C.R. 12208, para. 93 (2000) (“*Twelfth Report and Order*”); 47 USC § 214(e)(6).

¹² *Twelfth Report and Order*, para. 92; 47 USC § 214(e)(6).

¹³ *Twelfth Report and Order*, para. 93 (*emphasis added*).

receive such a notification, *rather than relying on notifications that may have been provided to similarly situated carriers.*"¹⁴

While Cellular South has arguably provided an "affirmative statement" that meets the Commission's requirements found in the *Twelfth Report and Order*, its failure to consult with the APSC before filing its petition has severely limited the Agency's ability to address an issue on it which it has not ruled – the granting of ETC status to a carrier located in the service area of a rural incumbent local exchange carrier ("Rural ILEC") in Alabama.

Although the Commission has previously rejected the argument found in Section 214(e)(6) petitions that it must first consult with a state commission before designating a CMRS provider as an ETC for a service area that differs from the Rural ILEC's study area,¹⁵ the Commission has also recognized that state commissions must be ensured the opportunity to participate fully in the ETC designation proceeding.¹⁶ Cellular South's ability to proceed expeditiously must be tempered by the fact that the APSC simply has not yet issued an order responding to a request for ETC designation in the service area of a Rural ILEC located in Alabama. Both the APSC's recent comments on this issue as well as its previous pronouncements

¹⁴ *Twelfth Report and Order*, para. 113 (*emphasis added*).

¹⁵ Arguably Section 214(e)(5) prohibits an ETC designation for an area that encompasses less than a rural carrier's study area absent agreement between the Commission and the APSC. If the APSC sought to use a different "service area" for an ETC applicant in a rural carrier's study area, federal and state concurrence on the new definition would be required. 47 C.F.R. § 54.207

¹⁶ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Report and Order, CC Docket 96-45, 16 F.C.C.R. 18,133 (2001) ("*Western Wireless South Dakota Memorandum Opinion and Order Number 1*"), para. 18.

regarding the implementation of Section 214(e) of the Act highlight the importance of this issue to the state of Alabama. Specifically, the APSC has found that a competitive carrier should only be certified as a Competitive Eligible Telecommunications Carrier ("CETC") in a Rural ILEC service area if it can demonstrate "compelling circumstances" that the designation is in the public interest:

*"Any carrier that desires designation as an ETC in the service area of a rural local exchange company (LEC) must demonstrate compelling circumstances indicating that it is in the public interest to have an ETC other than the incumbent LEC in the study area of that rural incumbent LEC. Further, carriers seeking designation as ETCs in the service areas of rural incumbent LECs must, if so approved, serve the entire service area of the rural LEC absent a compelling demonstration as to why some other lesser service area would better serve the public interest."*¹⁷

Again, the order granted to Pine Belt Cellular and Pine Belt PCS on which Cellular South relies is an order that only addresses ETC designation of a CMRS carrier in areas served by non-rural incumbent LECs. The prior holding of the APSC that "any carrier" seeking CETC designation in the territory of a Rural ILEC must demonstrate "compelling circumstances" that the designation is in the public interest before obtaining ETC status in an area that encompasses less than all of the rural ILECs service area¹⁸ underscores why the APSC should not be limited in its ability to address this particular issue.

Active consultation with the APSC would help the FCC address one of the critical issues raised by the Alabama Rural LECs: the failure of Cellular South to truly offer universal service throughout its requested service area. The APSC employs engineers and customer service representatives that could provide further insight regarding the service actually offered by Cellular

¹⁷ *Implementation of The Universal Service Requirements Of Section 254 Of The Telecommunication Act of 1996*, Notice, APSC Docket 25980, (released October 31, 1997).

South to the public. It is impossible, however, for the APSC to provide such input in the limited amount of time available for the presentation of comments.¹⁹

B. Cellular South Does Not Offer All of the Services Supported by the Federal High-Cost Universal Service Program.

A common carrier designated as an ETC may not receive universal service support unless the carrier offers the services supported by universal service support mechanisms, either through the use of its own facilities or some combination of its own and the resale of another carrier's services.²⁰

The services designated for support include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory service; and, (9) toll limitation for qualifying low income customers.²¹

1. Voice Grade Access to the Public Switched Network and Single-Party Service or its Functional Equivalent.

Although Cellular South articulates the Commission's bandwidth requirement and asserts that Cellular South customers "are able to make and receive calls on the public switched network

¹⁸ Id.

¹⁹ The APSC has previously cited the problem of poor service quality in some rural Alabama areas *APSC Report on Proposed Regulation of Wireless Carriers in Alabama*, <http://www.psc.state.al.us/Telecomm/wireless.htm> (visited May 16, 2002).

²⁰ 47 USC § 214(c)(1)(A).

²¹ 47 CFR § 54.101(a) (1998).

within the specified bandwidth”²² and that it “provides a dedicated message path for the length of a user’s particular transmission” in compliance with 47 CFR § 54.101(a)(3)²³, Cellular South simply does not provide single-party voice grade service in all of the areas where it requests ETC designation. The Petitioner simply does not, and with its current infrastructure cannot, provide ubiquitous service throughout its Alabama “footprint”, which is the area for which Cellular South seeks designation as a second ETC. Moreover, an argument by Cellular South that simply providing “service” to customers upon request is sufficient to meet the statutory mandates falls short. That provisioned service must be ubiquitous. Customers must be able to obtain service throughout the area for which Cellular South seeks universal dollars. Each of the Rural LECs was required to demonstrate that they met the universal service criteria prior to becoming eligible to receive funding²⁴ and is subject to continuing APSC monitoring of the use of universal service funds.²⁵ The Alabama Rural LECs respectfully request that the Commission take notice of the well-established fact that the network configuration – especially the placement of towers, of all cellular providers, including Cellular South, affect the ability of a caller to transmit and receive

²² Petition of Cellular South License, Inc. for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama (“*Cellular South Petition*”) at 4 – 5.

²³ *Cellular South Petition* at 6.

²⁴ *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Fifth Report and Order, APSC Docket 25980, (released December 18, 1997).

²⁵ *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Further Report and Order, APSC Docket 25980, (released December 20, 2001).

voice communications. Additionally, certain naturally occurring events and conditions, such as weather, topography of an area and even cellular shadows, impact the service reliability of cellular service providers such as Cellular South. To truly provide ubiquitous service, Cellular South would have to make the same type of infrastructure investment as the Rural LECs, making uneconomical capital investments to serve a few customers in remote areas. There is no evidence that Cellular South has built out its network in such a fashion. Rather than providing evidence of this commitment, they wish to receive universal service support, *at the front end*, for selected higher traffic rural areas. Cellular South should be required to demonstrate that all portions of its rural territory are indeed in its "footprint" prior to ETC designation. A mere affirmative statement that it will provide such service is not enough, since it is a meaningless gesture in the current regulatory environment. Alabama ILECs, as providers of universal service, stand ready to provide service to all potential customers within their service territories, and believe that this is an essential part of "universal" service. Without this type of commitment, including the requirements mentioned above, it simply does not make sense to provide a carrier with scarce universal service dollars.

The failure of Cellular South to meet established statutory requirements should preclude it from obtaining designation as a second ETC in the rural service areas of the Alabama Rural LECs. While the Commission has rejected the idea that CMRS service providers are ineligible for universal service support and has noted that "competitive neutrality includes technological neutrality", the Commission has not disregarded the requirement that a CMRS provider meet the

Section 214(e) requirements.²⁶ As the Commission has previously noted, “an ETC . . . has a statutory duty to offer service to every customer within the designated service area.”²⁷ Cellular South simply has not demonstrated that it complies with this basic eligibility requirement.

2. Local Usage.

Cellular South’s own petition fails to provide sufficient evidence that its service offerings include local usage. In general, Cellular South states that it “now provides *or will provide*, upon designation, the required services.”²⁸ Thus, while the *Public Notice* requires that the petitioner provide all of the supported services set out in 47 C.F.R. §54.101 (1998), including local service, the *Cellular South Petition* states that Cellular South “*will* comply with any and all minimum local usage requirements adopted by the FCC. Cellular South *will meet* the local usage requirements by including a variety of local usage plans as part of a universal service offering.”²⁹ While Cellular South says it is committing to the provision of local usage, it does not allege that it is currently providing such service nor has Cellular South detailed what their universal service offerings will consist of.

In considering the *Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota* filed by Western Wireless Corporation and

²⁶ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket 96-45, 16 F.C.C. R. 48 (2000) (“*Western Wireless Wyoming Memorandum Opinion and Order*”), para. 11.

²⁷ *Western Wireless Wyoming Memorandum Opinion and Order*, para. 20.

²⁸ *Cellular South Petition* at 4 (*emphasis added*).

whether Western Wireless met the requirement of section 214(e)(1)(A) to offer the services that are supported by the Federal Universal Service Support mechanisms – including the local usage requirement, the FCC observed “although the Commission has not set a minimum local usage requirement, Western Wireless currently offers several service options that include varying amounts of local usage in its monthly service plans.”³⁰ In its petition, Cellular South failed to provide such evidence in this case.

C. Cellular South Does Not Advertise the Availability of the Services Designated for Support by the Federal High-Cost Universal Service Program and the Charges for said Services Using Media of General Distribution.

In addition to the requirement that a common carrier offer the services supported by universal service support mechanisms, it must also advertise the availability of those services and the charges for them using media of general distribution.³¹ In other words, “Congress recognized that merely providing a service is not enough to ensure that the needed support is received. Rather, it imposed an obligation to advertise the availability of the supported services and the charges for those services.”³²

The Commission has discussed the added importance of advertising Lifeline and Link Up services to rural customers and has codified the advertising requirement in its rules addressing

²⁹ Id. at 5.

³⁰ *Western Wireless South Dakota Memorandum Opinion and Order 1*, para. 8.

³¹ 47 USC § 214(e)(1)(B); 47 CFR 54.201(d)(2) (1999).

³² *Twelfth Report and Order*, para. 76.

those programs.³³ Those amended rules require that the two programs be publicized “in a manner reasonably designed to reach those likely to qualify for those services.”³⁴ In fact, the Commission has concluded that carriers must be encouraged to undertake special certain efforts beyond regional advertising and the placing locally of posters in order to meet the publicity requirements attached to Lifeline and Link Up services.³⁵ Whereas the Alabama rural LECs have been required to demonstrate actual compliance with very specific APSC advertising requirements, Cellular South has failed to present any evidence demonstrating how it even intends to meet this requirement. While the Alabama Rural LECs recognize that this Commission has not prescribed specific methods for achieving the goal of effective advertising, the Commission has required that ETCs “identify communities with the lowest subscribership levels in its service territory and make appropriate efforts to reach qualifying individuals within their communities.”³⁶

III. DESIGNATION OF CELLULAR SOUTH AS AN ETC IN ITS SERVICE AREA IN ALABAMA IS NOT IN THE PUBLIC INTEREST.

“Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest.”³⁷ The designation of

³³ *Id.* at para. 76-80; 47 CFR §§ 54.405(b) and 54.411(d) (2001).

³⁴ *Id.* at para. 78; *Id.*

³⁵ *Id.*

³⁶ *Id.* at para. 79.

³⁷ *Western Wireless Wyoming Memorandum Opinion and Order*, para. 3; *See also, Western Wireless South Dakota Memorandum Opinion and Order 1*, para. 3.

Cellular South as an additional ETC, in the service area of the rural ILECs that make up the Alabama Rural LECs is not in the public interest. In fact, it will (1) harm consumers³⁸ and undermine the federal universal service fund and (2) reduce investment in infrastructure, raise rates or reduce service quality to consumers in rural areas.

Rural ILEC customers, like those currently served by the Alabama Rural LECs, do not “travel” with their telephones, which guarantees that the universal service support they receive will be used “only for the provision, maintenance, and upgrading of facilities for which the support is intended.”³⁹ In contrast, Cellular South customers have portable voice communications service and as such can take the service outside Cellular South’s designated ETC service area.

Currently, no adequate protections exist to insure that universal service support paid to Cellular South (which will be based on the ILEC’s costs rather than Cellular South’s) will be used to *benefit subscribers* that use the service *within* the requested designation area. In fact, because the service area in which a rural customer resides may not correspond to where the customer uses Cellular South’s voice communications service, the universal service fund will be negatively affected and its intended beneficiaries harmed. Until CMRS carriers are required to monitor subscriber usage and terminate universal service support for those subscribers who actually use

³⁸ *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, Memorandum Opinion and Order, CC Docket 96-45, 17 F.C.C.R. 1502 (released January 25, 2002) (“*Guam Memorandum Opinion and Order*”), para. 16.

³⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* (Communications Act or Act). References to section 254 in these Comments refer to the universal service provisions of the 1996 Act, which are codified at 47 U.S.C. § 254 of the Act.

the service outside the designated service area, CETCs like Cellular South will be motivated to seek high levels of per-line support. Cellular South will obtain customers located in rural ILEC territory; those customers will primarily use their Cellular South service in locations well beyond the geographic constraints of the area designated for support; and, ultimately high cost support will be paid to Cellular South for services used in low-cost, urban areas. Because of this aforementioned scenario—which is not only possible but also highly probable, Cellular South must not be granted ETC status in the service areas of Rural ILECs until adequate controls are in place. Otherwise, carriers like Cellular South will receive support for which they will not be accountable in contravention of Section 254 and this Commission's articulated goals. "In particular, we intend to develop a long-term plan that *better targets support to carriers serving high-cost areas*, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers."⁴⁰ This is most critical in cases like this where the carrier seeks the designation of a service area other than that of the incumbent rural ILEC.

The windfall of Cellular South and other similarly situated carriers may be the downfall of the Universal Service Fund. While the goal of the Telecommunications Act is competition, the Commission cannot provide Cellular South with an incentive to design a business strategy that may destroy universal service support. If CMRS carriers like Cellular South are routinely granted

⁴⁰ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket 96-45 and Report and Order, CC Docket 00-256, 16 F.C.C.R. 11,244 (2001) ("*Fourteenth Report and Order*"), para. 8 (footnote omitted).

ETC status without any Universal Service Fund protections in place, the improperly distributed support may actually prevent much needed support from ever reaching true high-cost, rural areas and harm consumers located in those areas. Even if the Alabama Rural LECs continue to receive support for providing an access line to the same customer, the resulting demand on universal service funding could raise the cost of these support mechanisms to an unsustainable level, jeopardizing the very goal that the fund was designed to achieve. Some mechanism must be put in place that balances promoting entry in the high cost, rural areas and uneconomic motivation to competition.⁴¹

In the very first order of the Commission addressing the implementation of the 1996 Act, the Commission declared that it would seek to reform universal service support "because the current system distorts competition in those markets."⁴² Simply put, the outcome described above also distorts competition in rural markets, by allowing Cellular South to obtain universal service support without truly providing ubiquitous service within its service area (however defined) and without applying such support to the provision of universal service in the areas for which it is targeted. This is incompatible with the statutory mandates of Section 254.

⁴¹ See, *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket 96-45, 16 F.C.C.R. 19,144 (2001). Statement of Commissioner Kevin J. Martin, Approving in Part, Concurring in Part and Issuing a Statement.

⁴² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 F.C.C.R. 15,499, para. 5 (footnotes omitted).

Absent growth of the Universal Service Fund, the misdirected support to carriers like Cellular South may deplete resources that should be directed to consumers in actual high-cost areas. Such a result is not in the public interest.

The Rural Alabama LECs are aware of the Commission's prior disagreement with the assertions of petitioners Golden West Telephone Cooperative, Project Telephone Company and Range Telephone Company in their *Petition for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*⁴³ as well as the assertions of petitioners Chugwater Telephone Company, Range Telephone Cooperative, Inc. and RT Communications, Inc. in their similar *Petition for Reconsideration and/or Clarification*⁴⁴ alleging that "competition may erode their customer base forcing higher rates to remaining customers".⁴⁵ For this reason, the Alabama Rural LECs have attempted to underscore why targeted competition should not be sponsored by the Universal Service Fund. The Alabama Rural LECs respectfully assert that, *in this instance*, Section 214(e) is, by itself, insufficient to protect them and their customers from the deleterious effects of "cream skimming" by new entrants.⁴⁶

⁴³ Golden West et al. *Petition for Reconsideration* (filed January 25, 2001).

⁴⁴ Chugwater et al. *Petition for Reconsideration and/or Clarification* (filed January 25, 2001).

⁴⁵ *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket 96-45, 16 F.C.C.R. 19,144 (2001) ("*Wyoming Order on Reconsideration*"), para. 19.

⁴⁶ Compare, *Wyoming Order on Reconsideration*, para. 12 (discussing the elimination of a concern regarding "cream skimming" due to the enactment of disaggregation options).

It is important to remember that Cellular South, unlike the Rural Alabama LECs, is not subject to price regulation for basic services. Currently, profitable wireless carriers such as Cellular South are already pricing their service packages at attractive rates despite not receiving any federal universal service funding. If ETC status is granted based on the present filing, this will create a revenue windfall for Cellular South with no accountability to enhance their infrastructure with the dollars they receive. In addition, system economics could exacerbate this scenario and drive Cellular South to offer more attractive bundled service packages to customers located only in certain profitable submarkets in the service territory of the Rural Alabama LECs, such as along a major highway or in an urban suburb. With its more lucrative customers lost, the Rural ILEC will then be required to spread its costs over a diminishing customer base. Testimony in the *Generic Hearing on Local Competition*, APSC Dockets No. 24499, 24472, 24030, and 24865 established the reliance of many rural LECs in Alabama on a few large business customers. The impact of such “cream skinning” will, inevitably, result in higher rates or increased demands on universal service to keep rates “reasonably comparable” as required by the Act.

Existing disaggregation options do not sufficiently address the aforementioned rate spiral caused by this type of competition and Cellular South’s petition should be denied. Unlike other states, none of the Alabama Rural LECs serve large, geographically dispersed service areas, which might justify consideration of a smaller area for universal service support. The APSC has required the Alabama Rural LECs to make substantial investments in plant to offer ubiquitous service throughout their service areas. This policy should be changed only after careful review and presentation of evidence by Cellular South that the interests of rural customers will not be

harmful by effectively allowing telephone companies to “pick and choose” which areas within existing rural telephone service territories they will offer basic services using universal service support.

IV. CONCLUSION.

Cellular South does not meet the statutory and regulatory requirements for ETC designation. It has not provided actively consulted with the APSC as articulated in the *Twelfth Report and Order*. It does not offer all of the services supported by the federal high-cost universal service program as required by Section 214 of the Act, nor does it advertise the availability of those services in accordance with Commission requirements. Finally, the public interest will not be served by designation of a second ETC in the service areas of the Rural Telephone Companies involved because designation (1) will harm consumers and detrimentally impact the Universal Service fund and (2) reduce investment, raise rates and reduce service quality in rural areas.

Accordingly, the Alabama Rural LECs urge the Commission to

- actively seek input from the APSC prior to the designation of an additional ETC in the service area of any of the Alabama Rural LECs;
- refrain from granting Cellular South’s ETC petition until meets all the requirements of Section 214 and applicable state requirements;
- deny Cellular South’s request to redefine the study areas of the Alabama Rural LECs, or alternatively, refrain from redefining the study areas of any of the Alabama Rural LECs prior to active consultation with the APSC; and,
- refrain from granting Cellular South’s ETC petition until sufficient safeguards are in place to guarantee that the public interest is not harmed by an undermining of the Universal Service Fund and the resulting reduction in

infrastructure investment, increase in rates and reduction in service quality available to high-cost, rural areas in Alabama.

Respectfully submitted,
Alabama Rural LECs

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July 3, 2002

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 3rd day of July, 2002, a true and correct copy of the above and foregoing COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS has been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

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